



April 4, 2008

Via electronic mail and U.S. mail

Elizabeth Jennings  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Dear Ms. Jennings,

Please find enclosed the petition for review submitted by Heal the Bay, captioned "*In the Matter of the Petition of Heal the Bay for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region, In Approving the Waste Discharge Requirements for the City of San Buenaventura Ventura Water Reclamation Facility Discharge to the Santa Clara River Estuary via Discharge Outfall No. 001, Order No. R4-2008-0011*," ("petition for review"). As we indicated to you previously, we are requesting that the petition for review be held in abeyance for the standard one-year period by the State Water Resources Control Board. In connection with our request, and based on the permission we received earlier from your office to provide sufficient citations in the petition for review *in lieu* of separate points and authorities, we are not enclosing separate points and authorities at this time. As we discussed, however, Heal the Bay reserves the right to submit further briefing if the petition for review is taken out of abeyance.

Please feel free to contact us if you have any questions about the petition for review at 310-434-2300.

Sincerely,

Noah J. Garrison  
Natural Resources Defense Council



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

March 25, 2008

Mr. Dan Pfeifer  
Utility Manager  
City of San Buenaventura  
P.O. Box 99  
Ventura, CA 93002-0099

**WASTE DISCHARGE REQUIREMENTS (WDRs) AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND TIME SCHEDULE ORDER (TSO), CITY OF SAN BUENAVENTURA, VENTURA WATER RECLAMATION FACILITY (NPDES NO. CA0053651, CI NO. 1822)**

Dear Mr. Pfeifer:

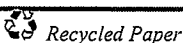
Our letter dated January 7, 2008, transmitted a revised tentative order for renewal of your permit to discharge wastes under the National Pollutant Discharge Elimination System (NPDES).

Pursuant to Division 7 of the California Water Code, this Regional Board at a public hearing held on March 6, 2008, reviewed the revised tentative requirements and Time Schedule Order (TSO), considered all comments received and all testimony given, and adopted Order R4-2008-0011 and R4-2008-0012 (copies enclosed) for your waste discharge. These Orders serve as your NPDES permit and TSO, and expire on February 10, 2013 and March 5, 2011, respectively. Section 13376 of the California Water Code requires that an application and Report of Waste Discharge for the renewal of your NPDES permit must be filed at least 180 days before the expiration date.

The Regional Board adopted the NPDES permit with additional language (See attachment) co-developed and presented by the Heal the Bay and the City of San Buenaventura at the March 6, 2008 Board Hearing. The changes are reflected on Pages 31 through 36, Section VI.C.2. of the Order and on Pages E-20 through E-25, Section IX of the accompanying Monitoring and Reporting Program.

Additional modifications were made by staff and were added to the motion during the hearing. Following is a summary of the modifications:

**California Environmental Protection Agency**



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- The total residual chlorine monitoring location specified on Footnote 8 of Monitoring and Reporting Program on Page E-7 has been corrected from "Chlorine Contact Chamber" to "Outfall".
- Section VI.C.1.k. of the tentative Order dated February 20, 2008, "This Order may be reopened upon the completion and in consideration of the watershed-wide study specified in section VI.C.2.a.ii. of this Order", has been deleted.
- The receiving water monitoring requirement for dissolved oxygen specified on Footnote 21 of the Monitoring and Reporting Program on Page E-19 has been revised as "Measuring DO in the receiving water shall continue weekly for a period of no more than six months from the Effective Date of this Order, at which time a diurnal sampling program will be implemented that includes at least one pre-dawn sample to fully evaluate the possible impact of the low DO levels on the Estuary given natural DO cycles in enclosed bays and estuaries and recognizing that there is no photosynthesis to generate oxygen during the night and all aquatic life depletes DO during the night. Following this study, the Executive Officer may consider modifications to the monitoring and reporting program."
- The Ventura Audubon Society's request has been incorporated into the Workplan as "An inventory of existing and potential bird nesting and foraging habitats within the Estuary, and a quarterly inventory of bird species and their numbers using the Estuary and wildlife/treatment ponds throughout the year, and the relationship of habitat types present and the success of California Least Tern and other sensitive avian species using the Estuary." The requirement is provided on Section VI.C.2.a.ii.(c) of the Order on Page 32 and Section IX.A.3.f of the Monitoring and Reporting Program on Page E-22.
- The definition of "Stakeholders" includes the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), California Department of Parks and Recreation (CDPR), the National Marine Fisheries Service (NMFS), Heal the Bay, Audubon Society, other dischargers and water users, and other interested stakeholders in the Estuary subwatershed. These Stakeholders are encouraged to participate *Estuary Subwatershed Study* and *Treatment Wetlands Feasibility Study*. Please see Section VI.C.2.ii. and iv. of the Order on Pages 31 and 34, respectively, and Section IX.A. and C. of the Monitoring and Reporting Program on Pages E-21 and E-23, respectively.

The complete final Order and TSO will be sent only to the Discharger. However, these documents are available on the Regional Board's website for your review. The Regional Board' web address is [www.waterboards.ca.gov/losangeles/](http://www.waterboards.ca.gov/losangeles/).

Mr. Dan Pfeifer  
City of San Buenaventura

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March 25, 2008

You are required to implement the *Monitoring and Reporting Program (MRP)* on the effective date of Order. The dates that the compliance monitoring and annual reports must be received at the Regional Board Office are provided in the *MRP*. Please submit all compliance monitoring reports and annual reports to the Regional Board, Attn: Information Technology Unit. When submitting monitoring, technical reports, or any correspondence regarding the discharge permit to the Regional Board, please include a reference to our *Compliance File Nos. CI 1822* for Order No. R4-2008-0011 to assure that the reports are directed to the appropriate staff and file. Please do not combine your discharge monitoring reports with other reports. Submit each type of report as a separate document.

If you have any questions or need additional information, please contact me at (213) 576-6720 or Don Tsai at (213) 576-6665.

Sincerely,



*for* Blythe Ponek-Bacharowski  
Unit Chief, Municipal Permitting Unit (NPDES)

Enclosures

cc. See attached mailing list

**California Environmental Protection Agency**



Recycled Paper

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## MAILING LIST

Ms. Robyn Stuber, U.S. Environmental Protection Agency, Region IX, Clean Water Act  
Standards and Permits (WTR-5)  
U.S. Army Corps of Engineers  
Mr. Russell M. Strach, Assistant Regional Administrator, Protected Resources Division,  
National Marine Fisheries Service, Sacramento  
Mr. Rodney R. McInnis, Regional Administrator, NOAA, National Marine Fisheries  
Service, Long Beach  
Mr. Stan Glowacki, NOAA, National Marine Fisheries Service, Long Beach  
Mr. Mark Capelli, NOAA, National Marine Fisheries Service, Santa Barbara  
Mr. Chris Dellith, Department of Interior, U.S. Fish and Wildlife Services  
Mr. Jeff Phillips, Department of Interior, U.S. Fish and Wildlife Services  
Mr. Roger Root, Department of Interior, U.S. Fish and Wildlife Services  
Ms. Jennifer Fordyce, State Water Resources Control Board, Office of Chief Counsel  
Mr. Michael Levy, State Water Resources Control Board, Office of Chief Counsel  
Mr. Philip Isorena, State Water Resources Control Board  
Ms. Betty Courtney, California Department of Fish and Game, Region 5  
Department of Health Services, Environmental Management Branch  
Mr. Richard A. Rojas, State Parks and Recreation  
Ms. Barbara Fosbrink, State Parks and Recreation  
Ventura County Department of Public Works, Flood Control and Drainage  
Ventura County Department of Environmental Health  
Ms. Ann Heil, County Sanitation Districts of Los Angeles County  
Mr. David Beckman, Natural Resources Defense Council  
Mr. Ron Bottorf, Friends of the Santa Clara River  
Ms. Lynn Plambeck, Santa Clara Organization for Planning and the Environment  
Mr. Steven R. Howard, United Water Conservation District  
Dr. Mark Gold, Heal the Bay  
Ms. Tatiana Gaur, Santa Monica BayKeeper  
Ms. Vicki Clark, Environmental Defense Center  
Mr. Jessie Altstatt, Santa Barbara ChannelKeeper  
Mr. Paul Jenkin, Surfrider Foundation  
Mr. Matti Waiya, Wishtoyo Foundation/Ventura CoastKeeper  
American Ocean Campaign  
Environmental Now  
Sierra Club  
Southern California Coastal Water Research Project  
Ms. Mary Lynn Coffee, Nossaman, Guthner, Knox & Elliott, LLP  
Mr. Reed V. Smith, Ventura Audubon Society  
Dr. Richard F. Ambrose, University of California, Los Angeles  
Dr. Camm C. Swift, Entrix, Inc  
Dr. Howard C. Bailey, Nautilus Environmental

Mr. Dan Pfeifer  
City of San Buenaventura

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March 25, 2008

Ms. L. Purpus, United Water Conservation District  
Ms. Elise Kelley, University of California at Santa Barbara

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***California Environmental Protection Agency***



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*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

**Recommendation for City of Ventura NPDES No. CA0053651**  
**Special Studies Provisions**  
**Tentative Order § VI.C.2; Monitoring and Reporting Program § IX.**  
**Based on Existing Tentative Permit Language and Proposal of Heal the Bay**

**Dated: March 6, 2008**

**Tentative Order Section VI. C.2. Pages 21-105 to 21-108**

**2. Special Studies, Technical Reports and Additional Monitoring Requirements**

**a. Special Studies.** Under the supervision of the Regional Board, and with ongoing input from, and in collaboration with the Regional Board, the City will prepare special studies on an integrated and coordinated basis as set forth in this section. All studies will be approved by the Executive Officer of the Regional Board.

i. Several special studies have been conducted since 2001. These studies were all associated with the influences of the discharge on the Estuary and included the *Salinity study, Residence Species Study, Metal Translator Study, and Updated Enhancement Study, and the copper Water Effect Ratio Study, which found that a factor of 1.58 should be applied to the copper CTR criteria. This factor was the lowest one among all 15 data points.*

ii. Estuary Subwatershed Study. In order to ensure compliance with optimize discharge conditions under the Bays and Estuaries Policy and to detect avoid negative impacts from the Facility's flows to the Estuary and to protect beneficial uses within the Estuary system and subwatershed, including those related to sensitive, endangered and threatened species as well as human recreation, the discharger shall submit a Work Plan within 6 months of the effective date of this Order, subject to the approval of the Executive Officer, to conduct a system-wide Estuary Subwatershed- Study. The Regional Board will encourage participation in the development and implementation of this Work Plan by the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), California Department of Parks and Recreation (CDPR), the National Marine Fisheries Service (NMFS), Heal the Bay, Audubon Society, other dischargers and water users, and other interested stakeholders in the Estuary subwatershed (collectively "Stakeholders"). The City will consider all input received from participating Stakeholders in preparing and implementing the Work Plan. This Work Plan must address the following:

(a) an Estuary water balance study to:

1. quantify the average monthly, seasonal and annual flows to the Estuary from all quantifiable sources, including groundwater exfiltration, surface water runoff, Santa Clara River flows, and Facility discharges;

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**Dated: March 6, 2008**

2. more specifically define the relationship between incoming flows and Estuary and habitat area, depth and volume; and
3. identify alternatives for future discharge flows, volumes and practices and map spatial inundation characteristics correlated with each discharge alternative, including the inundation boundaries for the existing and proposed treatment wetlands, the Estuary and adjacent McGrath State Park areas, and the areas, depths and volumes for the Estuary and its habitats, including critical habitat areas for listed aquatic species and nesting and foraging habitat areas for birds such as the California least tern.

- (b) the function of the sub-watershed and Estuary as a single unit. ~~that should be addressed.~~

~~This Work Plan will be used to conduct studies to determine the possible influence of discharge on the Estuary.~~

- (c) the following monitoring requirements:

1. Continuation of the "Fish Survey" and "Macroinvertebrate Monitoring Plan" to assess population and number trends (An Index of Biological Integrity score should be calculated from annual macroinvertebrate surveys);
2. The influences of groundwater on the Estuary water volume and quality;
3. An evaluation of the breaching frequency and impacts on the water quality and endangered species of the Estuary, and subwatershed water quality, including impacts on beach water quality downshore;
4. An assessment of sediment in the Estuary, including the need for additional sampling stations;
5. The establishment of temporary receiving water monitoring station in a portion of the Estuary that temporally extends beyond the normal boundaries of the Estuary;



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**Dated: March 6, 2008**

6. The influences of discharge on the McGrath State Park bird habitat areas;
  7. ~~The influences of discharge on the bird life that is dependent on the Estuary. We feel that a through assessment of the bird life that is depending on the Estuary is needed. An inventory of existing and potential bird nesting and foraging habitats within the Estuary, and a twice annual quarterly inventory of bird species and their numbers using the Estuary and wildlife/treatment ponds throughout the year, and the relationship of habitat types surface area of open waters present and the success of California Least Tern and other sensitive avian species using the Estuary.~~
  8. ~~You've mentioned~~ The potential for impacts on the Tidewater Goby and all listed species, plant and animal and. These chemicals may also impact the aquatic invertebrates that shorebirds depend on.
  9. ~~Estuary Water Balance Study~~
  9. An evaluation of dissolved oxygen (DO) conditions in the Estuary taking into account daily natural background DO levels and cycles within healthy, highly functioning Estuaries, including diurnal, or more frequent monitoring including predawn sampling within the Estuary for DO and preparation of a DO trend analysis based on existing data and new data obtained.
- d. The Work Plan shall provide that the work products discussed in sections (a) and (b) above, and other related work products determined to be necessary and appropriate by the Executive Officer, shall be completed and submitted to the Regional Board no later than 3 years and from the effective date of this Order.
- iii. Recycled Water Market Study. Based on information in, and conclusions of the Estuary Subwatershed Study discussed in section ii above, and the Treatment Wetlands Study discussed in section iv below the City will develop and implement a work plan to identify, research and evaluate feasibility of alternatives for increasing water reuse throughout the City

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**Dated: March 6, 2008**

and other areas within five miles of the Waste Water Reclamation Facility (based on sufficient proximity to infrastructure and facilities locations).

- a. The Study and Work Plan will be designed to determine the maximum volume of recycled water that should be planned for in order to meet the following goals:
  - i. optimize discharge flows, volume and practices for protection of beneficial uses, and environmental functions and values of the Estuary, including uses and functions related to provision of habitat for aquatic, terrestrial and avian sensitive, endangered, and threatened species;
  - ii. implement the best feasible configuration for treatment wetlands to further enhance surface flow water quality prior to discharge to the Estuary and subwatershed environmental functions and values; and
  - iii. most appropriately conserve and recycle water, in light of the foregoing goals, and anticipated increases in influent, increases in water demand, and the potential for decreasing supplies.
- b. A phased Work Plan for the Recycled Water Market Study shall be submitted on the date that is six months after the effective date of this Order. Phase 1 of the Recycled Water Market Study shall address macro-level supply and demand issues and their impact on a local recycled water market, together with potential local recycled water supply that could potentially be generated and demand for local supply from both anticipated population growth and expansion of the City's service area. Phase 1 of the Recycled Water Study shall be completed within 2 years of the effective date of this Order.

Phase 2 of the Recycled Market Study shall commence on or before the date that is 3 years from the effective date of this Order, and shall address identify, research and evaluate feasibility of alternatives for increasing effluent reclamation and use of recycled water based on information in, and conclusions of the Estuary Water Balance Study, the Treatment/Wildlife Pond Study, and Phase 1 of the Recycled Market Study, in order to meet the goals set forth in this Permit and developed within the Study:

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**Based on Existing Tentative Permit Language and Proposal of Heal the Bay**

**Dated: March 6, 2008**

Phases 1 and 2 of the Recycled Water Study shall be completed prior to the expiration of the term of this Order.

iv. Treatment Wetlands Feasibility Study. The City will complete a Treatment Wetlands Feasibility Study within two years of the effective date of this Order. The Regional Board will encourage participation in the development and implementation of this study by the Stakeholders. The City will consider all input received from participating Stakeholders in preparing and implementing the Work Plan.

a. The Treatment Wetlands Feasibility Study will include:

i. identification of a preferred proposed wetland site location and preliminary, planning level design specifications for additional treatment wetlands;

ii. preliminary planning level specifications and measures to maximize treatment for nutrients and to address other contaminants appropriate for wetlands treatment;

iii. modeling to predict projected discharge-related pollutant loads and concentrations entering the treatment wetlands, pollutant loads and concentrations leaving the treatment wetlands;

iv. preliminary planning level design and operational specifications and measures that can enhance wildlife use of the treatment wetlands without adversely affecting or limiting treatment functions;

v. preliminary construction, maintenance and operation cost estimates and the shortest realistic and practicable proposed schedule for environmental approval, permitting and construction of additional treatment wetlands.

b. At the conclusion of the Treatment Wetlands Study and upon concurrence of participating Stakeholders or the Executive Officer of the Regional Board with the recommended additional wetlands treatment project, the City will begin during the term of this Order

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**Dated: March 6, 2008**

to implement the environmental approval, permitting and construction processes for the additional treatment wetlands in accordance with the recommendations and schedules established by the Study. Accordingly, the City will undertake, without limitation, the following tasks:

- i. preparation of documentation, and initiation of public review and hearing processes and other required activities related to incorporation of the recommended additional wetlands treatment project into the City's integrated long-range water resource plan;
- ii. preparation of documentation, and initiation of public review and hearing processes and other required activities related to review and approval of the additional wetlands treatment project under the California Environmental Quality Act;
- iii. preparation of permit applications, supporting plans and materials, and other activities related to incorporation of the recommended additional wetlands treatment project under local land use regulations and applicable state and federal environmental laws;
- iv. preparation of design documents and construction plans for the additional wetlands treatment project; and
- v. upon receipt of all required permits, approvals and environmental clearances, construction activities related to implementation of the additional wetlands treatment project.

In the event the stakeholders do not concur, the Regional Board staff will consider the opinions submitted by all stakeholders. The EO will advise the City as to how to proceed, if she feels it is appropriate, may bring the matter to the Regional Board, and the permit may be reopened to consider such recommendations or other relevant matters.

- c. The Regional Board shall reopen this Permit to consider revision of permit provisions to require implementation of the additional wetlands treatment project determined by the Wetlands Feasibility Study to be appropriate for implementation, and concurred with by

**Recommendation for City of Ventura NPDES No. CA0053651**  
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**Dated: March 6, 2008**

the Regional Board and participating stakeholders. Any new or revised permit requirements considered or adopted pursuant to this re-opener shall be consistent with the approval, permitting, design and construction actions and schedules developed in the Treatment Wetlands Feasibility Study, and shall allow reasonable time frames for completion of identified activities. The re-opened permit, if adopted, shall be for a term of 5 years, and shall require during that term the completion of all approval, permitting, and design processes and commencement of construction activities. The new permit requirements shall further expressly acknowledge that permitting and approval processes are subject to the potential for delays that are not reasonably within the control of Discharger, and Discharger shall not be held in violation of the permit as revised for any failure to comply with its terms resulting from delays in those processes that are not reasonably within its control, including, by way of example, third party appeal or litigation of any required approvals or permits.

*To implement these suggestions for description of special studies, conforming changes would be necessary for:*

- *The Fact Sheet*
- *Sections of the Revised Tentative Order in addition to § VI.C.2, including conforming changes to reopener provisions; and*
- *Sections of Attachment E, the Monitoring and Reporting Program, in addition to § IX., including changes to the sediment monitoring provisions:*

*(Example Revisions to Reopener Provisions:)*

Delete Tentative Order Section VI.C.1.k. page 21-104

Modify provisions of Attachment E, Monitoring and Reporting Program Section VIII. A. 2. Table 4.b., fn 21 page 21-194:

“Measuring DO in the receiving water shall continue weekly for a period of no more than six months from the Effective Date of this Order, at which time a diurnal sampling program will be implemented that includes at least one pre-dawn sample to fully evaluate the possible impact of the low DO levels on the Estuary given natural DO cycles in enclosed bays and estuaries and recognizing that there is no photosynthesis to generate oxygen during the night and all aquatic life depletes DO during the night. Following this study, the Executive Officer may consider modifications to the monitoring and reporting program.”

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(related to DO monitoring in favor of addition of the DO monitoring program and trend study incorporated into the Estuary Water Balance Study.)

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6 Facsimile: (310) 434-2399  
7 ngarrison@nrdc.org

8 Attorney for HEAL THE BAY, INC.

9 STATE OF CALIFORNIA  
10 STATE WATER RESOURCES CONTROL BOARD

11 In the Matter of the Petition of Heal the	)	
12 Bay For Review of Action by the	)	PETITION FOR
13 California Regional Water Quality	)	REVIEW OF LOS ANGELES
14 Control Board, Los Angeles Region, In	)	REGIONAL WATER
15 Approving the Waste Discharge	)	QUALITY CONTROL
16 Requirements for the City of San	)	BOARD ACTION OF
Buenaventura Ventura Water Reclamation	)	ADOPTING ORDER
Facility Discharge to the Santa Clara	)	No. R4-2008-0011
River Estuary via Discharge Outfall	)	
No. 001, Order No. R4-2008-0011	)	

17  
18 Introduction

19 In accordance with section 13320 of the California Water Code and section 2050 of  
20 Title 23 of the California Code of Regulations, Heal the Bay ("Petitioner") hereby petitions the  
21 State Water Resources Control Board ("State Board") to review the March 6, 2008 final decision  
22 of the California Regional Water Quality Control Board for the Los Angeles Region ("Regional  
23 Board") approving the Waste Discharge Requirements for the City of San Buenaventura Ventura  
24 Water Reclamation Facility ("Plant") Discharge to the Santa Clara River Estuary via Discharge  
25 Outfall No. 001, Order No. R4-2008-0011 ("Permit").

26 The Permit regulates discharges from the Ventura Water Reclamation Facility ("Plant") to  
27 the Santa Clara River Estuary ("Estuary"), which is part of a designated Natural Preserve and an  
28 important ecosystem to which the Plant has discharged for approximately 45 years. This discharge

1 has been, and continues to be, in violation of the State Board's *Water Quality Control Policy for*  
2 *the Enclosed Bays and Estuaries of California* ("Bays and Estuaries Policy"), as enumerated in  
3 Section 4, *infra*. The Bays and Estuaries Policy, passed in 1974, mandates that absent a specific  
4 finding that a discharge will "enhance the quality of receiving waters above that which would  
5 occur in the absence of the discharge," wastewater discharges to estuaries must be phased out as  
6 soon as practicable. (State Water Resources Control Board Resolution No. 74-43; Resolution No.  
7 95-84.) The Regional Board has stated in the Permit that it is currently unable to make such a  
8 finding. Nonetheless, the Permit allows for the continued discharge of Plant wastewater, thereby  
9 violating the Bays and Estuaries Policy.

10 This discharge is all the more inappropriate under the Bays and Estuaries Policy given that  
11 the Plant is a known source of pollutants in the Estuary; indeed, the Plant was subject to seven  
12 individual Time Schedule Orders ("TSOs") issued by the Regional Board between October 12,  
13 2000 and December 14, 2006, demonstrating chronic violations of effluent limitations mandated  
14 by National Pollutant Discharge Elimination System ("NPDES") permits issued under the Federal  
15 Clean Water Act. Despite publicly recognizing these points as true during the adoption process for  
16 the Permit, the Regional Board nonetheless inappropriately and illegally approved it at its March 6,  
17 2008 hearing. Incredibly, the Regional Board issued an eighth TSO for the Plant at the same  
18 hearing at which it adopted the Permit.

#### 19 Summary of Factual Background and Relevant Time Periods

20 On March 6, 2008, the Regional Board adopted Waste Discharge Requirements for the  
21 City of San Buenaventura Ventura Water Reclamation Facility Discharge to the Santa Clara River  
22 Estuary via Discharge Outfall No. 001 (Order No. R4-2008-0011). The Permit fails to make a  
23 finding regarding whether or not discharges from the Plant serve to enhance the Estuary, as the  
24 Bays and Estuaries Policy requires in order to authorize an exception to the Policy's provision that  
25 discharges "shall be phased out at the earliest practicable date." (State Board Resolution 95-84.)  
26 In fact, the Regional Board explicitly concluded such a finding was not feasible; the Permit states  
27 that, "the Regional Board *presently has inadequate information with which to determine whether*  
28 *and to what extent the discharge that could be authorized by this permit continues to constitute an*



1 *enhancement.*” (Permit at 7 (italics added).) Rather than requiring that the Plant cease discharging  
2 to the Estuary, the Permit instead caps discharges at a level of 9 million gallons per day (as an  
3 annual average), in violation of the Bays and Estuaries Policy. (Permit at 17.)

4 Prior to the Regional Board’s release of the tentative Permit’s first draft, Heal the Bay  
5 submitted comments on two individual draft TSOs and a May 2005 Final Report Prepared for the  
6 City of San Buenaventura (“City”) by Nautilus Environmental entitled, *Comprehensive Analysis of*  
7 *Enhancements and Impacts Associated with Discharge of Treated Effluent from the Ventura Water*  
8 *Reclamation Facility to the Santa Clara River.* (Heal the Bay Letters to the Regional Board dated  
9 February 21, 2006, and November 27, 2006; Heal the Bay Letter to the City dated May 31, 2006.)  
10 In each letter, Heal the Bay commented that the Plant’s continued discharge to the Estuary did not  
11 enhance Estuary waters, and thereby violated the Bays and Estuaries Policy.

12 The Regional Board released a draft Tentative Order for the Permit on April 23, 2007 and a  
13 revised draft on October 23, 2007. Both drafts stated that “there has not been a consensus among  
14 stakeholders of whether the treated wastewater discharge into the Santa Clara River Estuary...is  
15 beneficial and enhances the Estuary, or has adverse impacts to the Estuary.” Therefore, lacking a  
16 finding of enhancement under the Bays and Estuaries Policy, the Regional Board required that  
17 discharges to the Estuary be “incrementally decreased by 1 mgd per year.” (Draft Order (April 23,  
18 2007) at 6; Draft Order (October 23, 2007) at 6.) Heal the Bay submitted timely comments to the  
19 Regional Board on each draft. The comments stated that they supported the incremental decrease  
20 in Plant discharge, but that the discharges did not enhance Estuary waters, and any continued  
21 discharge was in violation of the Bays and Estuaries Policy. (Heal the Bay Letters to Regional  
22 Board dated June 6, 2007, and November 7, 2007.)

23 The Regional Board subsequently released additional draft Tentative Orders for the Permit  
24 on November 8, 2007, and January 7, 2008. In the latter draft, the Regional Board abruptly  
25 removed any requirement that the Plant incrementally decrease its discharge and stated instead that  
26 the Regional Board “presently has inadequate information with which to determine whether and to  
27 what extent the discharge that could be authorized by this permit continues to constitute an  
28 enhancement.” (Draft Permit (January 7, 2008) at 8.) On this basis, the Regional Board declined

1 to supersede a previous, 1977 finding that discharge from the Plant enhances the Estuary. (*Id.* at 6,  
2 8.) The Permit instead capped discharge at 9 mgd (as an annual average). (*Id.* at 8.) Heal the Bay  
3 commented on the January 7, 2008 draft Permit, and stated that it was deeply opposed to the  
4 substantial revisions to the Permit's requirements. Heal the Bay also again commented that  
5 enhancement has not been demonstrated, and therefore, any continued discharge is illegal under  
6 the Bays and Estuaries Policy. (Heal the Bay Letter to Regional Board dated February 7, 2008.)  
7 At its March 6, 2008 hearing, and despite oral testimony presented by Heal the Bay against  
8 adoption of the Permit on grounds that it violated the Bays and Estuaries Policy, and the Regional  
9 Board's own acknowledgement that it was unable to make a finding of enhancement, the Regional  
10 Board voted to approve the Permit.

11  
12 1. PETITIONER'S NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL

13 ADDRESS:

14 HEAL THE BAY, INC.  
15 Mark Gold (mgold@healthebay.org)  
16 1444 9th Street  
Santa Monica, CA 90401  
Telephone: (310) 451-1500

17  
18 2. THE ACTION OR INACTION OF THE REGIONAL BOARD BEING PETITIONED  
19 INCLUDING A COPY OF THE ACTION BEING CHALLENGED:

20 Petitioner seeks review of the Regional Board's March 6, 2008 approval of the Waste  
21 Discharge Requirements for the City of San Buenaventura Ventura Water Reclamation Facility  
22 Discharge to the Santa Clara River Estuary via Discharge Outfall No. 001, Order No. R4-2008-  
23 0011. A copy of the Order is attached to this petition.

24  
25 3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:

26 March 6, 2008.

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1 4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR  
2 IMPROPER:

3 In approving the Permit, the Regional Board failed to act in accordance with relevant  
4 governing law, acted arbitrarily and capriciously, without substantial evidence, and without  
5 adequate findings. Specifically, but without limitation, the Regional Board:

- 6 A. Failed to require that discharge from the Plant to the Santa Clara River  
7 Estuary “shall be phased out at the earliest practicable date,” as required by  
8 the Bays and Estuaries Policy. (State Board Resolution No. 95-84, adopted  
9 November 16, 1995 and amending State Board Resolution 74-43.)
- 10 B. Failed to make findings sufficient to authorize an exception to the Bays and  
11 Estuaries Policy’s requirement that discharges “be phased out at the earliest  
12 practicable date.” (State Board Resolution 95-84.) The Bays and Estuaries  
13 Policy states that, “Exceptions to this provision may be granted by a  
14 Regional Board only when the Regional Board finds that the wastewater in  
15 question would consistently be treated and discharged in such a manner that  
16 it would enhance the quality of receiving waters above that which would  
17 occur in the absence of the discharge.” (*Id.*) The Regional Board has not  
18 made such a required finding in the Permit.
- 19 C. Failed to make sufficient findings “to bridge the analytical gap between the  
20 raw evidence and ultimate decision”—approval of the Permit. (*Topanga*  
21 *Assn. for Scenic Cmty. v. County of Los Angeles*, 11 Cal. 3d 506, 515  
22 (1974).) The Board acted arbitrarily and capriciously because the ultimate  
23 decision of adopting the Permit is not supported by the findings, the findings  
24 are not supported by the weight of the evidence in the administrative record,  
25 and the administrative record does not support the ultimate decision  
26 adopting the Permit, thus, resulting in an abuse of discretion. (*See id.*; Cal.  
27 Civ. Proc. Code § 1094.5.)

28 ///

1 D. Failed to respond adequately to factually and legally specific comments  
2 from public interest organizations concerning the most highly significant  
3 matters at issue, such as the demonstrated lack of “enhancement” of Estuary  
4 waters. (*See* State Board Resolution 95-84.)

5 E. Acted in approving the Permit in these respects without evidence in the  
6 record. (Cal. Civ. Proc. Code § 1094.5.)  
7

8 5. HOW THE PETITIONER IS AGGRIEVED:

9 Petitioner is a non-profit, environmental organization that has a direct interest in protecting,  
10 *inter alia*, the quality of waters in the City of San Buenaventura and Ventura County. Heal the  
11 Bay is an organization that represents approximately 12,000 members in southern California,  
12 including Ventura County, and is dedicated to making southern California coastal waters safe and  
13 healthy again for people and aquatic life. Petitioner’s members are aggrieved by the Permit’s  
14 inadequacy and, thereby, the Plant’s continued discharge in violation of the Bays and Estuaries  
15 Policy. In particular, Petitioner’s members directly benefit from the Plant’s downstream waters,  
16 including the Estuary, in the form of recreational fishing, hiking, swimming, photography, bird  
17 watching, surfing, and boating.

18 The Regional Board’s failure to require that discharge be phased out at “the earliest  
19 practicable date” through this Permit has enormous consequences for the region and its residents.  
20 Pollutants conveyed in Plant discharge are a known problem and constitute one of the greatest  
21 sources of pollution to the Santa Clara River Estuary; discharges from waste treatment plants not  
22 only harm the environment, but also have been shown to cause serious human health impacts. As  
23 a result, the Plant’s continued discharge is one of the most severe water quality problems facing  
24 the region.

25 In sum, these documented facts demonstrate the considerable negative impact on  
26 Petitioner’s members and the environment that continues today as a result of the Regional Board’s  
27 inability to require that Plant discharge be phased out.

28 ///

1 6. THE ACTION PETITIONER REQUESTS THE STATE BOARD TO TAKE:

2 Petitioner seeks an Order by the State Board that:

3 Overturns the Regional Board's approval of the Waste Discharge Requirements for  
4 the City of San Buenaventura Ventura Water Reclamation Facility Discharge to the  
Santa Clara River Estuary via Discharge Outfall No. 001, Order No. R4-2008-0011.

5 Remands the matter to the Regional Board with specific direction to remedy each of  
6 its violations of law as described herein.

7  
8 7. A STATEMENT OF POINTS AND AUTHORITIES FOR ANY LEGAL ISSUES  
9 RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS THAT ARE  
10 REFERRED TO:

11 *See section 4, supra.*

12  
13 8. A STATEMENT THAT COPIES OF THE PETITION HAVE BEEN SENT TO THE  
14 REGIONAL BOARD AND TO THE DISCHARGER:

15 A true and correct copy of this petition was sent via First Class mail on April 4, 2008 to the  
16 Regional Board and Permittee at the following addresses:

17 Ms. Tracy Egoscue, Executive Officer  
18 Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
19 Los Angeles, CA 90013

20 Ms. Vicki Musgrove  
City of Ventura  
21 Public Works Division Manager  
336 Sanjon Rd., P.O. Box 99  
22 Ventura, CA 93002

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1 9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED  
2 TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN  
3 EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE  
4 OBJECTIONS BEFORE THE REGIONAL BOARD:

5 Petitioner made every effort to resolve this matter before the Regional Board. The issues  
6 relevant to this Petition were raised by Petitioner in comment letters dated February 21, 2006,  
7 May 31, 2006, November 27, 2006, June 6, 2007, November 7, 2007, and February 7, 2008.  
8 These issues were further presented through oral testimony presented at the March 6, 2008  
9 hearing.

10  
11 Respectfully submitted via electronic mail and U.S. mail.

12  
13 Dated: April 4, 2008

NATURAL RESOURCES DEFENSE COUNCIL, INC.

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19 Noah J. Garrison  
20 Counsel for Heal the Bay, Inc.  
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